

OGC 80-05264
19 June 1980ODP # D-524

MEMORANDUM FOR: See Distribution
STATINTL

FROM : [redacted]
Office of General Counsel

SUBJECT : Center for National Security Studies v. CIA

REFERENCE : OGC Memorandum dated 10 June 1980, Same Subject

1. The reference indicates that information responsive to Plaintiffs' interrogatories should be forwarded to this Office no later than July 19, 1980 in order that it could be used to fashion the Agency's response. This response was to have been submitted during early July. This is to advise each addressee that the timetable of these responses has, for the moment, been extended. It now appears that component responses to these interrogatories will be due in this Office during early September 1980. This date is however, subject to change due to the vagories of this litigation.

2. As a result of a meeting between OGC attorneys, and attorneys from the Department of Justice, the general litigation strategy that will be followed in this case has been determined. The broad outline of this strategy is highlighted below:

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Open American Motion. This motion will indicate that CIA is working on each of these requests as expeditiously as possible and that CIA has been handling FOIA requests, generally speaking, on a first-in-first-out basis. In such a case, the court will be urged not to interrupt the processing line by ordering that a particular request be processed by a particular date. It is likely that this motion will be filed with

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[redacted] This argument involves an assertion by CIA that it can neither confirm nor deny the existence of particular records since even the existence of such records is subject to classification and the disclosure of the existence of any such records would result in the compromise of intelligence sources and methods. This argument will be made with regard to

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It is likely that, at some point, within the next few months, this Agency will be required to answer some of these interrogatories. As a result, work should continue on them. In the event the court rules against some of these various motions, discovery might be sought immediately. In such a case, it is not very likely a court would be sympathetic to any claims that CIA needed a substantial amount of time in which to prepare a response. Work should continue on preparing an answer to each interrogatory that is relevant to a particular component. This work should have, as its firm, estimated completion date, the first week in September 1980.

5. I have received a number of calls with a common question-- "to what extent should CIA employees who worked on these various FOIA requests be identified?" A number of comments are in order. Some employees are under a misapprehension that any information provided to OGC will be turned over to Plaintiffs. This will certainly not be the case. I will disclose no information so provided without first coordinating an answer with the person or persons who provided it to me. Second, only the employee who, at the component level was assigned to review responsive documents should be identified at this stage. In some cases, this employee may be the FIO of the component. In other cases, this employee may be an employee or employees who work under the direction of the FIO. No other employees need be "identified" in any response to this Office at this time. Once again, the fact that such information is forwarded to OGC does not mean it will be provided to Plaintiffs.

6. If any addressee of this memo has any questions, he or she should feel free to call me on extension 6046 Black.

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1 - OSWR/FIO
1 - OCO/Admin Officer
1 - NFAC Coordinator for Academic Relations

10 June 1980

MEMORANDUM FOR: See Distribution STATINTL

FROM : [REDACTED]

Office of General Counsel

SUBJECT : Center for National Security Studies
("CNSS") Litigation

1. Attached to the complaint in the CNSS litigation are a set of interrogatories. A copy of these interrogatories are attached. As a review of these very detailed questions will indicate, plaintiffs appear intent upon scrutinizing the way CIA handles FOIA requests. Since Plaintiffs have alleged that CIA has discriminated against the FOIA requests filed by Plaintiffs; i.e., processed these requests more slowly than requests received from other individuals, it appears that these interrogatories are their first step in the process of developing facts which, in their view, will support this claim of discrimination.

2. Answers to these interrogatories are due on Monday, July 7 1980. Since July 7 is the date the answers must be provided to Plaintiffs' counsel, and since these interrogatories are very detailed, a substantial lead time will be required by this Office in order to prepare this Agency's overall response. Accordingly, a complete response from each component must be delivered to this Office no later than close of business, Thursday, June 19. Although these interrogatories request a substantial amount of information--information which must be provided to this Office for review--one point is worth noting at the outset. Although this Office expects a complete and comprehensive response from each major component involved in this litigation, it is quite clear that not all of the information that will be submitted to OGC will be given to Plaintiffs. Accordingly, in each

response information which, in your view, should not be provided to Plaintiffs counsel should be enclosed in brackets. In addition, the reason such information should not be provided should be set forth briefly. A hypothetical response may illustrate this point:

Count I, Answer to Interrogatory I: This FOIA action was handled by (J.P. Smith) an employee in the (XXX Division) of the DDA. Mr. Smith is the (Security Officer) for the DDA and his phone number is (351-1000).

Reasons for withholding bracketed information:
Smith is under cover; XXX Division has not been acknowledged; Smith's phone number and job have not been released previously.

3. In preparing a response to any interrogatory, a number of definitions used in these interrogatories must be kept in mind. These definitions are highlighted below:

"documents" means any paper, electrical, mechanical magnetic, photographic or other means of recording information (Plaintiffs' definition A)

"identity" when used with respect to an Agency employee or other person, means to provide the following information:

-- the name, address and telephone number of each person,

-- the job title of such person and the division in which such person works or, if the individual no longer works for CIA, to provide the name of the present employer, place of employment, and job title (Plaintiffs' definition B).

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"identity" when used with respect to a "document,"
means to provide the following information:

- characterize the document (letter, memo, etc),
- state the date appearing on the document, or if no date is shown, indicate the date the document was prepared,
- describe the general subject matter of the document,
- "identify" the person who wrote, signed or otherwise participated in the preparation of the document,
- "identify" each person who was an addressee of the "document"
- "identify" each person having custody of the document (Plaintiffs' paragraph C).

Comparable definitions apply to the oral communications which are "identified" as responsible to these interrogatories (Plaintiffs' paragraph D) as well as any other "sources of information" which are relied upon in formulating an answer (Plaintiffs' paragraph E).

4. It is also important to note that Plaintiffs' Instruction 2, which is part of these interrogatories, requires the "identification" of the person responsible for formulation of the answer, the documents used in preparing the answer, and the "identification" of all persons interviewed or consulted in the preparation of the answer. This requirement will be relatively simple to comply with provided each recipient of this memorandum takes care to

note the information required as he or she prepares an answer (Plaintiffs' instruction 2).

5. These interrogatories apply only to actions taken from January 1976 to the present, unless otherwise indicated in the specific interrogatory itself (Plaintiffs' instruction 3).

6. In the event a particular sort of an interrogatory cannot be answered, it should be answered to the maximum extent practicable. In addition, any reasons for an incomplete answer should be indicated (Plaintiffs' instruction 5).

7. Although each component responsible for providing an answer will be supplying this Office with information in greater detail than will be provided to Plaintiffs, it is important to emphasize that these interrogatories should be answered as completely as possible. This is so because, the answer to each interrogatory must be known before this Office can determine what privileges may be asserted in order to avoid providing an answer to Plaintiffs. Although it is likely that answers will not be provided to each and every question in the detail demanded by Plaintiffs, the Agency, in order to satisfy legal requirements, must be prepared to do so.

8. Interrogatories Numbered 1, 2, 3, 4, & 15(f) should be answered by each component tasked with searching its records in response to any of the twelve FOIA requests at issue in this litigation. These interrogatories require the following information with regard to each of the twelve FOIA requests which served as the basis of a search of the particular component's records. In effect, if a particular component was tasked with searching its records for documents responsive to three of Plaintiffs' twelve FOIA requests, then Questions 1-4 and 15(f) should be answered separately with respect to each request. Of course, some answers will be the same with regard to each request. These 4 interrogatories are summarized below:

Interrogatory 1: "Identify" all persons who have been responsible for or have performed any function with regard to each FOIA request, including a description of this person's responsibilities or functions performed with respect to this request.

Interrogatory 2: "Identify" each document, except for correspondence between CIA and any Plaintiff, which refers or relates to the processing of any FOIA request from any Plaintiff in this case.

Interrogatory 3: "Identify" each document, except correspondence between CIA and any Plaintiff which refers to any Plaintiff or to the Project on National Security and Civil Liberties.

Interrogatory 4: "Identify" each person who, from 1976 to the present, has had responsibility for or has participated in any way in processing or setting policies or establishing procedures for processing FOIA requests.

Interrogatory 15(f): describe the number of personnel involved in the processing of FOIA requests at the component level, "identifying" full-time and part-time personnel.

9. Interrogatories Numbered 1 through 16 should also be answered by IPD.

10. Interrogatory 3--a request for all documents which refer to any Plaintiff or to the Project on National Security and Civil Liberties--should be answered by each and every component of this Agency and not just by those components whose records were searched in response to any of Plaintiffs' twelve FOIA.

11. Compilation of the Agency's response to these interrogatories will involve a substantial amount of effort. While certain information will not be provided to Plaintiffs, it must, nevertheless, be provided to this Office for review on or before close of business on June 19.

12. If any recipient of this memorandum has any questions regarding the information which should be provided in response to a particular interrogatory, he or she should feel free to call me on extension 6046 Black.

13. If the preparation of a response will not be completed by close of business on June 19, I would appreciate a direct response from the particular component as soon as possible. This is so because it may be necessary to request additional time in which to comply with these interrogatories. In light of the age of four of the requests at issue in this litigation--requests which were submitted in 1976--it would be advisable if CIA did not have to request an extension of time in which to comply. Moreover, it should be noted that, even if an extension of time is requested, no guarantee exists that this motion will be viewed with favor by the District Court Judge. Accordingly, everyone who is responsible for developing his or her component's response to these interrogatories should be prepared to submit their response by the specified date.

14. It is critical that these responses provide information on a request-by-request basis, since this is the format in which the information is sought in the interrogatories. Accordingly, care should be taken at the component level to ensure that the following format is used:

The following information is provided in response to Count _____ (insert Count Number) of Plaintiff's Complaint. The answer to Interrogatory 1 is as follows:

· (insert answer in as much detail as required)

(insert answer in as much detail as required)

This format should be followed with regard to each and every FOIA request at issue in this litigation. If this format is not followed it will be very difficult for me to prepare any answers to these interrogatories on an Agency-wide basis. For the use of each employee who will be preparing a response to these interrogatories, I have attached, as Attachment A, a listing of the "Counts" of the complaint and the F number associated with each count. As a review of this Attachment indicates, each FOIA request is set forth in a separate count.

15. In addition, copies of any documents responsive to these interrogatories should be located and arranged according to the particular interrogatory to which they are responsive. Accordingly, documents from each component should be first arranged by "Count" and then arranged by interrogatory number. In effect, this will create, for the typical component, 5 sets of documents for each Count. It is important that these responsive documents be gathered together at the component level. This is so because Plaintiffs have also filed a request for the production of documents, in which they seek to inspect documents that are responsive to their interrogatories. Even though responsive documents may be withheld from Plaintiffs' counsel for a variety of reasons, it is very important that these documents be rounded up at this time, since Plaintiffs may attempt to inspect these documents during the last week in June. At this time, rather than forwarding all such potentially responsive documents to me, each component should, instead, simply indicate by Count Number and by Interrogatory question the number of responsive documents. The type of report I am seeking is outlined in a hypothetical way below:

Number of (insert component name) documents responsive to Interrogatory Number 1: (insert number)

Number of documents responsive to Interrogatory Number 2: _____

Number of documents responsive to Interrogatory Number 3: _____

Number of documents responsive to Interrogatory Number 4: _____

Number of documents responsive to Interrogatory Number 15(f): _____

COUNT NUMBER II

(repeat the format indicated for Count I above)

Once the total number of potentially responsive documents is known, I will attempt to work out some type of satisfactory arrangement with Plaintiffs' counsel which will reduce the total number of documents that must be disclosed. For the moment, however, the number of potentially responsive documents must be reported by June 19. In addition, a start should be made on reviewing these documents for release and an estimate of the date this review will be completed should be provided to me on or before June 19.

15. I am completely aware that the size of this particular litigation generates substantial problems for everyone involved. Unfortunately, there is no alternative but to attempt to ride this one out.

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CENTER FOR NATIONAL SECURITY)
STUDIES, et al.)
Plaintiffs)
v.) Civil Action No.
CENTRAL INTELLIGENCE AGENCY,)
et al.)
Defendants)

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100-1205

PLAINTIFFS' INTERROGATORIES TO
DEFENDANT CENTRAL INTELLIGENCE AGENCY - FIRST SET

Plaintiffs request defendant CIA to answer separately in writing and under oath each of the following interrogatories in accordance with Rule 33 of the Federal Rules of Civil Procedure within thirty (30) days of service of same.

DEFINITIONS

For purposes of these interrogatories, the following definitions shall apply:

A. The word "document(s)" shall mean all written recorded, or graphic material, and all mechanical and electronic sound recordings (or transcripts thereof), however produced or reproduced, and whether or not now in existence, including without limitation, all material handwritten, typed, printed on a computer file, or otherwise, or any photograph, photostat, microfilm, or any other reproduction thereof, each note, memorandum, letter, telegram, account, circular, release, analysis, appraisal, draft, report, article, book, summary, diary, transcript, order, agreement, confirmation slip, contract, or check.

B. The word "identify" when used with respect to a person or persons mean (1) to state the name, address and telephone number of each such person; (2) to note the job title and division in which such person works or, if no longer with the CIA, the name of the present employer, place of employment and job title, if any, of each such person.

C. The word "identify" when used with respect to a document means: (1) to specify the nature of the document (such as, for example, a letter, memorandum, etc.); (2) to state the date, if any, appearing on the document, or if none, the date upon which such document was prepared; (3) to describe in general the subject matter of the document; (4) to identify each person who wrote, signed, dictated or otherwise participated in the preparation of the document; (5) to identify each person, if any, who was an addressee thereof, and (6) if it now exists, to identify each person having custody of the document.

D. The word "identify" when used with respect to an oral communication means: (1) to state the date of such communication; (2) to identify each person participating therein and each person who was present; (3) to describe in general the substance of such communication; (4) to state whether there are any documents which set forth, summarize or otherwise refer to any portion of such oral communication; and (5) if such documents exist, to identify each such document and each person having custody of the document.

E. When an interrogatory calls for a person's "source of information," defendant is to state where, when, and from whom learned the information was learned; whether the information was oral or in writing, and if oral, an

identification of the individuals who were present during the course of the conversation and if in a document, an identification of the document; an identification of each document which refers or relates to the source of information and from whom plaintiff obtained the document; and an exact account of the circumstances surrounding which plaintiff obtained each document.

F. As used herein, the term "Complaint" shall refer to the complaint filed by plaintiffs in the above-entitled action.

G. The words "in connection with" and "relating to" when used with respect to documents or oral communications mean any document or oral communication that constitutes, contains, embodies, reflects, identifies, states, refers to, or is in any other way relevant to a given subject or transaction.

INSTRUCTIONS

1. These interrogatories shall be deemed continuing to the full extent provided by Rule 26(e) of the Federal Rules of Civil Procedure. Where additional information is obtained subsequent to the time the answers to these interrogatories are served, such answers shall be supplemented not later than thirty (30) days after such additional information is received.

2. Each interrogatory is to be regarded as seeking information in the possession or custody of any employee or agent of defendant CIA. At the conclusion of each answer to an interrogatory or part thereof, identify the person responsible for the answer, all documents used in preparing the answer, and all persons interviewed or consulted in preparing the answer.

3. Unless otherwise indicated, each of these interrogatories requests information for the period from January 1976 to the present or roughly the period during which the FOIA requests which are the subject of the Complaint have been pending.

4. As used herein, the singular shall be deemed to include the plural and vice versa; the masculine shall be deemed to include the feminine and vice versa; the disjunctive ("or") shall be deemed to include the conjunctive ("and") and vice versa; and each of the functional words "each," "every," "any" and "all" shall be deemed to include each of the other functional words.

5. Interrogatories which cannot be answered in full shall be answered as completely as possible, and incomplete answers shall specify the reasons for the incompleteness, as well as stating whatever knowledge, information or belief you possess with regard to each unanswered or partially answered interrogatory.

6. If you claim a privilege as a justification for failing to answer or otherwise limiting your response to any interrogatory, set forth in detail the grounds on which you base the claim, including, without limitation, the identity of the person from whom the privilege purportedly derives.

INTERROGATORIES

1. Identify all persons who have had any responsibility for or have performed any function with respect to each FOIA request which is the subject of the Complaint, including for each such person a description of the responsibilities or functions performed with respect to each request.

2. Identify each document, except correspondence between defendant CIA and any plaintiff, which refers or relates to the processing of any FOIA request from any plaintiff.

3. Identify each document, except correspondence between defendant CIA and any plaintiff, which refers to any plaintiff or to the Project on National Security and Civil Liberties, excluding publications by plaintiffs or the Project except where such publications are annotated by defendant CIA.

4. Identify each person who, during the period January 1976 to present, has had responsibility generally or within any department of the CIA for, or has participated in any way in processing or setting policy or establishing procedures for processing, FOIA requests received by the defendant CIA, including for each such person a description of his responsibilities or the nature of his participation and the period of time during which he had such responsibilities or participated in the manner described.

5. Describe the present policy of the CIA with respect to processing FOIA requests including policy affecting:

- (a) processing requests within the time limits set under FOIA;
- (b) processing appeals;
- (c) the waiver of search fees; and
- (d) the processing of a request pending decision on the waiver of fees;

6. Describe the present procedures at the CIA for processing FOIA requests including procedures affecting:

- (a) processing requests within the time limits set under FOIA;

(b) processing of large versus small requests;
(c) appeals as a result of denials of requests;
(d) appeals as a result of failure to respond within the time periods provided under FOIA;
(e) sequential processing of requests and appeals;
(f) the determination whether to waive search fees;
(g) the processing of a request pending decision on the waiver of fees;
(h) the processing of a request after a decision has been made with respect to waiver; and
(i) requests from different categories of requestors (i.e. whether requests are broken down into categories for different treatment and, if so, what are the categories and what treatment is received by each).

7. Describe the stages for processing each FOIA request received by defendant CIA including for each stage the identification of persons responsible for handling each request at that stage and the judgments made or actions taken before the request may move to a subsequent stage.

8. If the policies or procedures described in answer to interrogatories 5, 6 and 7 have differed from January 1976 until the present, describe the difference, supplying the dates during which the policy or procedure was in effect and the reasons for any changes that have been made.

9. Identify any document setting forth, discussing, relating or referring in any way to the policies or procedures described in answer to interrogatories 5, 6, 7

and 8. (It is not necessary in answering this interrogatory to identify form correspondence sent to FOIA requestors which are the result of or implement such policies or procedures.)

10. Identify any document which describes or discusses priorities in processing FOIA requests.

11. Identify any document listing or setting forth those agencies, persons or organizations whose FOIA requests receive or have received priority processing.

12. Identify each document not already identified in answer to a previous interrogatory relating or referring in any way to setting policy or establishing procedures for processing FOIA requests.

13. Identify each meeting or discussion attended by CIA personnel for the purpose of setting policy or establishing procedures for processing FOIA requests.

14. Describe all instances between January 1, 1976 and the present in which (i) the established procedures for processing FOIA requests were not followed or (ii) requests were not handled sequentially, including for each such instance the date and subject matter of the request, the name of the requestor and a brief account of the processing of the request and the manner in which and reason it differed from established procedures or was processed non-sequentially.

15. Describe the present status of FOIA requests of the CIA including:

- (a) the present backlog;
- (b) plans or efforts to reduce the backlog;
- (c) the number of requests received per day;
- (d) the average time period necessary to complete processing a request (broken down by

category, if the agency uses categories, see
interrogatory 6(i));

(e) the rate at which requests are processed;

(f) the number of personnel involved in
processing requests, identifying full-time and
part-time personnel.

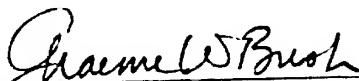
16. Identify all sources of information contained
in the reports to Congress required under subsection d of
FOIA, 5 U.S.C. §552(d), prepared from 1976 to date, including:

(a) the person primarily responsible for
preparing each report;

(b) all persons who collected or supplied
data or other information included in each report,
describing the data or information supplied by
each such person;

(c) all oral communications or documents
produced in connection with the preparation of
each report, including memoranda discussing
whether to include or exclude specific informa-
tion, data or opinions.

Respectfully submitted,


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CENTER FOR NATIONAL SECURITY)
STUDIES, et al.)
Plaintiffs)
v.) Civil Action No. 80-1235
CENTRAL INTELLIGENCE AGENCY,)
et al.)
Defendants)

PLAINTIFFS' REQUEST FOR PRODUCTION OF DOCUMENTS
BY DEFENDANT CENTRAL INTELLIGENCE AGENCY

Pursuant to Rule 34 of the Federal Rules of Civil Procedure plaintiffs request defendant CIA to produce and make available for inspection and copying by plaintiffs or their attorneys the documents hereinafter described.

Plaintiffs request that the documents be made available for inspection at the offices of Caplin & Drysdale, 1101 Seventeenth Street, N.W., Washington, D.C. 20036 on June 27, 1980, or any other date that is mutually agreeable to counsel for the parties.

The terms defined in the section labeled "DEFINITIONS" in Plaintiffs' Interrogatories to Defendant Central Intelligence Agency - First Set shall have the same meanings for purposes of this request.

The documents covered by the request are as follows:

1. Any and all manuals, memoranda or other documents setting forth instructions or procedures to be used by any person in processing FOIA requests received by the CIA.
2. Any and all memoranda, correspondence or other document relating in any way to any FOIA request identified in Counts I - XII of the Complaint. It will not be necessary in responding to this request to produce correspondence sent to or received from plaintiffs, except to the

extent that such correspondence has been written on, annotated or altered in any way from its form when it was originally sent or received.

3. Any and all memoranda, correspondence or other document relating or referring generally to FOIA requests by plaintiffs or other public interest organizations.

4. The log kept by the CIA of all FOIA requests received by it between April 1, 1975 and the present.

5. All documents, correspondence or other records identified in response to Plaintiffs' Interrogatories to Defendant Central Intelligence Agency - First Set.

Date: May 15, 1980

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